

KEATING, MUETHING & KLEKAMP  
ATTORNEYS AT LAW

JOHN L. MUETHING  
DONALD P. KLEKAMP \*  
TIMOTHY A. GARRY  
GARY P. KREIDER  
DON R. GARDNER  
MICHAEL J. BURKE \*  
LOUIS F. GILLIGAN  
JOSEPH P. ROUSE  
RICHARD D. SIEGEL  
DENNIS M. DOYLE  
LANNY R. HOLBROOK \*  
JOSEPH L. TRAUTH,

18TH FLOOR PROVIDENT TOWER

ONE EAST FOURTH STREET

CINCINNATI, OHIO 45202

11632

RECORDATION NO. 11632 Filed 1425

APR 8 1980 - 10 27 AM

April 1, 1980 INTERSTATE COMMERCE COMMISSION

JAMES R. WHITAKER  
J. DAVID ROSENBERG \*  
W. BRUCE LUNSFORD \*\*  
RICHARD L. CREIGHTON, JR.  
PAUL V. MUETHING  
JEROME C. RANDOLPH  
JEFFREY K. HEINICHEN  
WILLIAM A. POSEY  
WILLIAM J. KEATING, JR.  
WILLIAM J. KEATING  
COUNSEL

\* ALSO ADMITTED TO  
PRACTICE IN KENTUCKY  
\*\* LEAVE OF ABSENCE

INTERSTATE COMMERCE COMMISSION

Secretary of the  
Interstate of Commerce Commission  
Washington, D.C. 20423

0-099A015

APR 8 1980

Fee \$ 100.00

Dear Sir:

ICS Washington, D. C.

Enclosed for recordation in the order listed below pursuant to 49 U.S.C. 11303, please find an original and three counterparts of each of the following documents:

- (1) Agency and Pooling Agreement dated as of March 25, 1980 among Railway Freight Car Services, Inc., as Agent, and the owners listed on Schedule I thereto.
- (2) Management Agreement between Railway Freight Car Services, Inc., as Agent, and Columbus & Greenville Railway Company, as Manager, dated as of March 25, 1980.

The names and addresses of the parties to the documents are as follows:

1. Railway Freight Car Services, Inc. *original*  
North Shore Towers  
269-10C Grand Central Parkway  
Floral Park, New York 11005  
Attention: Harvey Polly
2. Columbus & Greenville Railway Company *Manager*  
P. O. Box 6000  
Columbus, Mississippi 39701  
Attention: Jim Thompson, Treasurer
3. B & R Company  
P. O. Box 1831  
Cincinnati, Ohio 45202
4. Sandra W. Heimann  
One East Fourth Street  
Cincinnati, Ohio 45202

RECEIVED  
APR 8 10 19 AM '80  
I.C.C.  
FEE OPERATION BR.

*C. Allen [Signature]*  
*James [Signature]*  
clerk

Secretary of the Interstate  
Commerce Commission  
April 1, 1980  
Page Two

5. Robert C. Lintz  
One East Fourth Street  
Cincinnati, Ohio 45202
6. Carl H. Lindner, III  
580 Walnut Street  
Cincinnati, Ohio 45202
7. Stephen Craig Lindner  
One East Fourth Street  
Cincinnati, Ohio 45202
8. Keith Edward Lindner  
One East Fourth Street  
Cincinnati, Ohio 45202
9. Allen L. Davis  
One East Fourth Street  
Cincinnati, Ohio 45202
10. J. Lynn Brewbaker  
One East Fourth Street  
Cincinnati, Ohio 45202
11. Harvey Polly, Lessee  
c/o Railway Freight Car Services, Inc.  
North Shore Towers  
269-10C Grand Central Parkway  
Floral Park, New York 11005

The equipment covered by the documents consists of 50 100-ton 52'6" gondola cars, having identifying marks of CAGY 13,000 through 13,049.

Please return three stamped copies of each of the enclosed documents to:

Keating, Muething & Klekamp  
18th Floor Provident Tower  
One East Fourth Street  
Cincinnati, Ohio 45202

Attention: Richard D. Siegel

Very truly yours,

KEATING, MUETHING & KLEKAMP

BY:   
Richard D. Siegel

**Interstate Commerce Commission**  
Washington, D.C. 20423

4/8/80

OFFICE OF THE SECRETARY

**Richard D. Siegel**  
**Keating, Muething & Klekamp**  
**18th Floor Provident Tower**  
**One East Fourth Street**  
**Cincinnati, Ohio 45202**

Dear **Sir**:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **4/8/80** at **10:25am**, and assigned re-recording number(s). **11632 & 11632-A**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

11632  
RECORDATION NO. .... Filed 1425

APR 8 1980 - 10 35 AM

INTERSTATE COMMERCE COMMISSION

AGENCY AND POOLING AGREEMENT

AMONG

THE PERSONS EXECUTING THIS AGREEMENT  
AND IDENTIFIED ON SCHEDULE I  
AS THE OWNERS

AND

RAILWAY FREIGHT CAR SERVICES, INC.,  
AS THE AGENT

DATED AS OF MARCH 25, 1980

(COVERING UP TO 50 52'6" 100 TON GONDOLAS)

Filed and recorded with the Interstate Commerce Commission  
pursuant to the Interstate Commerce Act on \_\_\_\_\_, 1980  
at \_\_\_\_\_, Recordation No. \_\_\_\_\_.

## AGENCY AND POOLING AGREEMENT

THIS AGREEMENT made and entered into as of this 25th day of March, 1980 by and among Railway Freight Car Services, Inc., a New York corporation, and those persons executing this Agreement and identified on Schedule I hereto as the owners of the railroad equipment described in Exhibit A hereto.

WHEREAS, the persons identified on Schedule I hereto (hereinafter individually referred to as an "Owner" and collectively referred to as the "Owners") have agreed to purchase from Thrall Car Manufacturing Company the number of 52' 6" 100 Ton Gondolas (hereinafter individually referred to as an "Unit" and collectively referred to as the "Units") listed beside their names on Schedule I hereto; and

WHEREAS, the Owners have agreed among themselves to pool the revenues to be generated by the Units and the expenses incurred by the Owners in operating and maintaining the Units; and

WHEREAS, the Owners desire to engage Railway Freight Car Services, Inc. (hereinafter referred to as the "Agent") to perform certain designated functions on behalf of the Owners with respect to their respective Units and to enforce and perform certain provisions of the Management Agreement between Railway Freight Car Services, Inc., as Owner and Columbus & Greenville Railway Company, as Manager (hereinafter referred to as "Manager"), which was assigned by Agent to the Owners on March 25, 1980 (hereinafter referred to as the "Management Agreement" dated as of March 25, 1980); and

WHEREAS, the Owners hereby desire to engage the Agent to perform certain additional functions on their behalf to carry out their intention to pool the revenues and expenses with respect to the Units; and

WHEREAS, the Agent has agreed to accept the appointment by the Owners as their agent and to perform as provided for hereunder;

NOW, THEREFORE, in consideration of the mutual promises made herein; the Owners intending to be legally bound, hereby agree as follows:

Section 1. Engagement of Agent. The Owners hereby engage the Agent as their Agent to collect on their behalf amounts due to or on behalf of the Owners with respect to the Units and

disburse funds of the Owners to pay costs, expenses and obligations of the Owners with respect to the Units, all on the terms and conditions set forth herein; and the Agent accepts such engagement and agrees to act as agent for the Owners and perform in accordance with the terms and conditions hereof.

The Owners hereby direct the Agent (i) to enter into that certain Management Agreement with the Columbus & Greenville Railway Company in the form of Exhibit B attached hereto, for and on behalf of the Owners; (ii) to exercise, subject to the terms of this Agreement, the rights and perform the duties under the Management Agreement, and (iii) to take such other action specified herein or as Owners may from time to time direct.

Section 2. Term. The term of this Agreement and the agreement by the Owners to pool expenses and revenues shall commence as to each Unit upon acceptance of such Unit by the Manager under the terms of the Management Agreement and shall continue until March 31, 1995; provided, however, this Agreement shall automatically be extended for not more than Five (5) successive periods of Twelve (12) months each (hereinafter called an "Extended Term") with respect to all Units not suffering a Casualty Occurrence (as defined in the Management Agreement) unless the Owners of at least 75% of the Units give written notice to all the Owners and to the Agent delivered not less than Six (6) months prior to the end of the initial term or any Extended Term of their intention to terminate this Agreement, in which case this Agreement shall terminate as to all, but not less than all, of the Units on the last day of the initial term or the Extended Term set forth in such notice.

Section 3. The Owners' Revenues, Expenses and Net Earnings.

(a) The actual Gross Revenues (as hereinafter defined) derived from the operation of all the Units and the actual Operating Expenses (as hereinafter defined) shall be accounted for and combined together.

(b) As used in this Agreement, the term "Gross Revenues" shall mean all income payable or attributable to the Owners (unreduced by any costs or expenses) derived from the ownership, management, use, and/or operation of the Units, including but not limited to all Remittances (as defined in the Management Agreement) and any additional revenues payable to the Owners under Section 26 of the Management Agreement. "Operating Expenses" shall mean all expenses and costs incurred in connection with the ownership, management, use, and/or operation of the

Units, including, but not limited to all charges for any maintenance or repairs to the Units; painting, costs of modification, improvements or additions which are required by the American Association of Railroads (hereinafter "AAR"), the Interstate Commerce Commission (hereinafter "ICC"), the U.S. Department of Transportation (hereinafter "DOT") or other regulatory agency or otherwise required to comply with applicable laws, regulations, or requirements; accounting fees incurred pursuant to Section 12(d) hereof; legal fees incurred in connection with enforcing any rights of the Owners in or to the Units or repossessing the Units; insurance, charges, assessments, or levies imposed upon or against the Units of whatever kind or nature; losses from liabilities which are not the responsibility of an individual Owner under Section 4(e); and the Owner's pro rata share of applicable ad valorem, gross receipts or other property taxes. Gross Revenues and/or Operating Expenses attributable to a calendar quarter which are received or paid after the date of payment for such quarter shall be included in subsequent quarterly distributions and accounted for as Gross Revenues or Operating Expenses of that subsequent quarter.

(c) Each Owner's Gross Revenues and Operating Expenses for any fiscal period shall be the product of (i) Gross Revenues derived from all the Units or Operating Expenses incurred by or with respect to all the Units for such period, as the case may be, multiplied by (ii) a fraction the numerator of which is the number of Units owned by such Owner and the denominator of which is the total number of Units operated hereunder (or a weighted average to reflect any Units subject to this Agreement for a partial period as appropriate). The number of Units operated hereunder shall be the number of Units actually operated under this Agreement from time to time during such fiscal period and if any Units are destroyed or lost, and therefor removed from this Agreement during such fiscal period, any computation under this Section 3(c) shall reflect such destruction or loss from the date of any payment as a result of a Casualty Occurrence (as defined in the Management Agreement).

(d) As used in this Agreement, the term "Net Earnings" shall mean the Gross Revenues attributable to the Units less the sum of (i) the amount of the Operating Expenses attributable to the Units, (ii) all compensation due and payable to the Agent under Section 5 hereof and the Manager under Section 6 of the Management Agreement not theretofore paid, (iii) such reserves as the Owners of a majority of the Units shall, in their sole discretion, have reasonably created to provide for the efficient administration of this Agreement, for payment of accrued expenses not yet due, for the management of the Units, or for expenses relating to the Units arising or

payable after the termination or expiration of this Agreement,  
(iv) any amount due and payable from an Owner pursuant to  
Section 4(b) and not theretofore paid.

Section 4. Distribution to each Owner of Net Earnings;  
Payment of Costs and the Expenses.

(a) Regular Distributions of Net Earnings. Within sixty (60) days after the end of each calendar quarter, the Agent shall distribute to each Owner the excess of the Net Earnings attributable to the operation of the Units of such Owner during such quarter, less a reserve of \$300 or such lesser amount per Unit per quarter as is required to maintain a working capital reserve of \$1,500 per Unit at the commencement of each quarter.

(b) Payment of Operating Deficits. Within ten (10) days of receipt of notice and demand from the Agent, each Owner shall pay to the Agent the amount by which the sum of Net Earnings for a calendar quarter shall be less than zero.

(c) Payment for Additional Insurance. If the Agent determines, as provided in Section 6(g) hereof, that the cost of insurance described therein is unreasonably high, or cannot be obtained, and an Owner elects to purchase such insurance or any additional insurance, the cost thereof shall be the sole responsibility of such Owner. Within ten (10) days of receipt of notice and demand from the Agent, the Owner shall pay to the Agent the cost of any such insurance placed or purchased by the Owner through the Agent. The Owner shall also pay to the Agent in the same manner the cost of any insurance against loss of revenues with respect to his Units which the Owner has elected to place or purchase through the Agent.

(d) Payment For Casualty of Any Unit. Any payments, including, without limitation, insurance benefits or railroad, manager, or lessee indemnity payments, received to cover the casualty to any Unit (but not to cover loss of rental payments) shall be solely for the account and benefit of the Owner and shall not be included within the term "Gross Revenues".

(e) Payment of Uninsured Losses. Losses for bodily injury or property damage caused by any Unit which are not covered by insurance are the sole responsibility of each Owner. Within ten (10) days of receipt of notice and demand from the Agent, the Owner shall pay to the Agent the amount of such liability.

(f) Receipts and Payments as Acts of Each Owner; Obligations of Each Owner. In collecting or receiving any Gross Revenues



and in paying or disbursing any Operating Expenses the Agent is acting solely as agent for the Owners. The provisions of Sections 3 and 4 of this Agreement shall not be understood to diminish or modify the rights of the Owners to receive Gross Revenues or the Obligation of the Owners to pay Operating Expenses. Agent agrees to hold any and all monies received by the Agent for use of or relating to the Units in trust for the sole use and benefit of the Owners.

Section 5. Compensation. As compensation to the Agent for the performance of services hereunder, each Owner shall pay to the Agent the following amounts:

(a) Two and One-Half Percent (2-1/2%) of all Gross Revenues generated by the Units and received by the Owners unless the mileage charges received by the Owners of the Units are increased by not less than One Hundred Percent (100%) without a material decrease in the per diem or incentive per diem revenues, in which event, the Agent shall receive from and after the date of such increase Seven and One-Half (7-1/2%) of all Gross Revenues; and

(b) Reimbursement of all costs and expenses (but not overhead expenses of the Agent) incurred by the Agent in the performance of its duties hereunder.

Section 6. Duties of the Agent. In consideration of the compensation to be paid to the Agent by the Owners pursuant to Section 5 hereof, and subject to the agreement of the Owners to compensate the Agent pursuant to Section 5 hereof, the Agent shall provide and perform the services on behalf of the Owners set forth below during the term of this Agreement unless otherwise directed by the Owners of more than 75% of the Units:

(a) Immediately upon execution of this Agreement, or as soon thereafter as reasonably practicable, take possession of the Units as agent for the Owner for delivery to the Manager under the Management Agreement for the purpose of managing and operating the Units, as herein provided.

(b) Use its best efforts to keep such Units placed with a railroad under a management agreement for the term of this Agreement, entering into, as agent for Owner, management agreements providing for the management of the Units on terms and conditions which are customary in the industry and acceptable to the Owners and taking such steps as may be required to insure that all obligations and duties arising under such agreements are performed or complied with in an orderly and timely fashion.

(c) In the event that the Units are not leased to a railroad or placed with a railroad under a management agreement, use its best efforts to insure that all steps are taken which may be necessary to have the Units registered and accepted by all hauling carriers under the Association of American Railroads ("AAR") as required by the terms of any agreement.

(d) Collect or cause to be collected all payments and car hire charges due with respect to the Units, identifying itself as agent for that purpose, and account for and remit all sums due to the Owners as hereinafter provided.

(e) Enforce all rights of the Owners with respect to management agreements, including the payment of all amounts under any management agreement or otherwise with respect to the Units as shall be appropriate or necessary in the judgment of the Agent exercised in good faith; and take any required or permitted steps and institute and prosecute legal proceedings in the name of the Owners as is permitted by applicable laws in order to terminate such agreements and/or recover possession of the Units; and, when expedient, settle, compromise and/or release such actions or suits or reinstate such management agreements.

(f) Review all maintenance and repair costs incurred or to be incurred with respect to the Units so that only necessary or appropriate maintenance or repair work at the proper charges therefor is performed and cause the Units to be maintained in good condition, which shall be equal to or greater than the higher of (i) any standard required or set forth for the Unit or Units of a similar class by the AAR, ICC or DOT or any successor thereto, (ii) any standard set by a lessee or manager, whether by terms of a lease or management agreement or by other understanding or agreement between any lessee or manager and the Agent, as agent for the Owners, and (iii) any standard set by any insurance policy under which the Units or any of them shall from time to time be insured, and to arrange for all alterations, modifications, improvements or additions to the Units to comply with applicable laws or regulations.

(g) Use its best efforts to place in the Owner's name such insurance as shall be reasonably available to protect the interest of the Owner in the Units (with the Agent, in its capacity as agent for the Owner, being named in each such policy of insurance as a co-insured or additioned insured), including, without limitation, insurance against (i) personal liability, including property damage and personal injury and (ii) loss of or damage to the Units; provided, however, the Agent shall use its best efforts to effect such insurance under a blanket insurance policy, or insurance policy covering each of Owner's Units and other units of railroad equipment

owned, leased or managed by the Agent and such insurance need not be placed in the Owner's name so long as the Owner is named as an insured; and provided further, however, that if the Agent determines that the cost of insurance described above is unreasonably high or cannot be obtained, the Agent need not place or acquire such insurance and shall so notify the Owners.

(h) Pay in each Owner's name all personal property taxes and other taxes, charges, assessments, or levies imposed upon or against the Units of whatsoever kind or nature and, in the Agent's discretion, defend against any such charges and seek revision of or appeal from any assessment or charge deemed improper, all such actions to be in the name of each Owner and in accordance with the Management Agreement;

(i) Monitor and record, and, in the case of Units used on or off the line of a railroad or manager of the Units, cause such railroad or manager to monitor and record movement of the Units.

(j) Maintain, and, with respect to use of the Units on or off the line of a railroad or manager of the Units cause such railroad or manager to maintain, complete and accurate records of all transactions relating to the Units and make such records available for inspection by the Owners or any of the Owners' representatives (including the Agent, in the case of records maintained by a railroad or manager of the Owners) during reasonable business hours.

(k) Paint the Units such colors and with such designs as the Owners may from time to time approve and place reporting marks or such other marks, legends, or placards on the Units as shall be appropriate or necessary to comply with any regulation imposed by the ICC or the AAR.

(l) Provide the Owners with advice and recommendations concerning the sale of the Units.

(m) Use its best efforts to collect all sums due the Owners, including, without limitation, insurance benefits and railroad, lessee or manager indemnity payments, in the event of damage to, or loss or total destruction of, a Unit during the term of this Agreement and to remit all sums due the Owner as herein provided.

(n) Furnish factual information reasonably requested by the Owner in connection with Federal and State tax returns.

(o) Perform for the Owners such other services incidental to the foregoing as may from time to time be reasonably necessary in connection with the ownership, use and operation of the Units.

Section 7. Authority, and Limitations on Authority, of Agent.

(a) It is recognized that the Agent will act as Agent for all the Owners' Units pursuant to this Agreement, and the Agent will receive from each Owner compensation comparable to that payable by each other Owner hereunder. It is further recognized and agreed that the Agent's services for and obligations to and rights with respect to each Owner are several. The Agent will not act or purport to act for or in the name of the Owners of the Units collectively or as an entity; it being expressly understood that any actions taken on behalf of the Owners or the Units will be taken as agent for such Owners, severally and individually, either naming such Owners or naming the Agent as agent for undisclosed several and individual principals. The parties hereto expressly recognize and acknowledge that this Agreement is not intended to create a partnership, joint venture or other entity among the Owners and/or the Agent. The Agent shall not take any action or engage in any course of dealing which would suggest or create an inference that there is any understanding or agreement between the Owners that they are acting collectively or as an entity and the Agent shall use its best efforts to assure that no silence or failure to act on its part creates or sustains any such suggestion or inference.

(b) The Agent shall not have any authority to offer for sale, contract or agree to sell or sell any Unit except as the Owner may from time to time hereafter expressly request or direct;

Section 8. Agent's Warranties. The Agent hereby represents and warrants that:

(a) The Agent is a corporation duly organized and existing in good standing under the laws of the State of New York, and is duly qualified in all foreign jurisdictions in which such qualification is necessary.

(b) The Agent is duly authorized to execute and deliver this Agreement, and is duly authorized to perform its obligations hereunder.

(c) The execution and delivery of this Agreement by the Agent, and the performance by the Agent of its obligations hereunder, do not conflict with any provision of law or of the Charter or Bylaws of the Agent or of any indenture, mortgage, deed of trust, or other agreement or instrument binding upon the Agent or to which the Agent is a party.

(d) The execution, delivery and performance of this Agreement by the Agent and the consummation by the Agent of the

transactions contemplated hereby do not require the consent, approval or authorization of, or notice to, any federal, state or local governmental authority or public regulatory body.

(e) The Agent's financial statement as of September 30, 1979, a copy of which has been furnished to the Owners, has been prepared in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding fiscal year and presents fairly the financial position of the Agent as of the date thereof, and the results of its operations for the period then ended, and since such date there has not been any material adverse change in its financial position.

(f) This Agreement is a legal, valid and binding obligation of the Agent, enforceable in accordance with its terms.

(g) There are not any pending or threatened actions or proceedings before any court or administrative agency which will to a material extent adversely affect the financial condition or continued operation of the Agent and its subsidiaries on a consolidated basis (except as previously disclosed to the Owners in writing by the Agent) or the ability of the Agent to perform its obligations under this Agreement.

Section 9. Indemnification. Each Owner shall defend (if such defense is tendered to such Owner), indemnify and hold the Agent harmless from and against any and all claims, actions, damages, expenses (including reasonable attorneys' fees), losses or liabilities incurred by or asserted against the Agent as a result of the use, operation, possession, control, maintenance, repair or storage of the Units; provided, however, that the Owner shall not be required to defend, indemnify or hold the Agent harmless from and against, and the Agent shall not be exculpated from, any claim, action, damage, expense, loss or liability directly or indirectly caused by or arising from the negligence, bad faith, or willful misconduct of the Agent.

Section 10. Subordination. This Agreement and the Agent's authority and rights hereunder are subject to the lien and security interest upon the Units and revenues generated by the Units held by any lender to whom an Owner has granted a security interest in the Units; provided, however, that all such liens and security interests are subject to any lease or management agreement entered into during the term of this Agreement (including, without limitation, the Management Agreement) and to the Agent's right to collect Gross Revenues accruing during the term of this Agreement.

Section 11. No Withdrawal of Units. The Owners agree and acknowledge that the continued participation of each Owner in

this Agreement is necessary and vital to its effective and profitable operations. Therefore, no Owner may withdraw his Units from said arrangement or terminate this Agreement as to those Units without the prior written consent of the Owners of not less than 75% of the Units. In the event that an Owner sells or transfers a Unit, this Agreement shall continue in full force and effect and the new owner or transferee shall be bound by the provisions hereof and entitled to the benefits hereof to the same extent as his predecessor.

Section 12. Reports.

(a) Not later than 60 days after the end of each calendar quarter the Agent will provide to each Owner an unaudited report showing, in reasonable detail, the Gross Revenues, Operating Expenses and Net Earnings for such quarter, including the computation and the allocation of any property taxes and the computation of the Owner's pro rata share of any items. Such reports shall also show the amount of Net Earnings, if any, for such quarter distributed for the benefit of the Owner pursuant to Section 4(a).

(b) Within 60 days after the close of each calendar year, the Agent will distribute to each Owner a report showing for the fourth quarter and such year (stated separately) the same information reported on the quarterly report distributed pursuant to Section 11(a).

(c) Not later than 60 days after the close of the Owner's taxable year (which will be deemed to be the calendar year unless the Owner shall otherwise notify the Agent in writing) the Agent will deliver to each Owner a statement setting forth all information (including computation of depreciation and amortization deductions) necessary in connection with the preparation of the Owner's Federal income tax returns.

(d) Within 90 days after the close of each calendar year the Agent will deliver to Owner a report of such independent certified public accountants as are then acting as accountants to the Agent and its affiliates, as to their review (which review will not constitute, and is not intended to be equivalent to, an audit of the operation of the Units) of the operations of the pooling arrangement provided for hereby, the mathematical correctness of the computations made by the Agent in the allocation of Gross Revenues, Operating Expenses and Net Earnings and the conformity of the accounting procedures followed by the Agent to the obligations and duties of the Agent under this Agreement.

Section 13. Use of Cars. The Agent shall use its best efforts to cause any railroad or manager of the Units under a lease or management agreement (including, without limitation

the Management Agreement) pursuant to which the Units are expected to be used off the line of such railroad or manager to prevent the Units from being used outside the United States. The Agent shall cause each lease or management agreement for the Units entered into, or arrangements for the use of the Units made by, a railroad which expects to use the Units on its own line or a person which is not a railroad to contain provisions regarding the identity of the lessees of the Units and the locations of use of the Units so as to avoid recapture of any allowable investment tax credit claimed with respect to the Units.

Section 14. Default. If the Agent shall fail to pay to the Owners any amount due hereunder for a period of ten (10) days, shall fail to perform any of its obligations hereunder for a period of thirty (30) days after written notice of such default from the Owners or shall file any petition or action under any bankruptcy, reorganization, insolvency, or moratorium law, or any other law or laws for the relief of, or relating to debtors or any such petition or action shall be filed against the Agent, the Owners may terminate, effective immediately, the appointment of the Agent hereunder with or without notice to the Agent.

Section 15. Assignment. Without the prior written consent of the Owners of at least 75% of the Units, the Agent shall not assign or transfer its interest in or delegate any of its duties or obligations under this Agreement or with respect to the Units, and any attempt to make an assignment or transfer without such consent shall be of no force or effect.

Section 16. Notices. Any notice required or permitted hereunder shall be in writing and shall be valid and sufficient if delivered personally or dispatched in any post office of the United States by registered or certified mail postage prepaid addressed to the other party as follows:

If to the Agent: Railway Freight Car Services, Inc.  
North Shore Towers  
269-10C Grand Central Parkway  
Floral Park, New York 11005  
Attention: Harvey Polley

If to an Owner: To the address set forth on Schedule 1 of this Agreement;

and any party may change such address by notice given to the other party in the manner set forth above.

Section 17. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by and construed under the laws of the State of Ohio.

(b) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(c) Headings. Titles and headings of the Sections and Subsections of this Agreement are for the convenience of reference only and do not form a part of this Agreement and shall not in any way affect the interpretation hereof.

(d) Amendment. No explanation or information by either of the parties hereto shall alter or affect the meaning or interpretation of this Agreement and no modification or amendment to this Agreement shall be valid unless in writing and executed by both parties hereto.

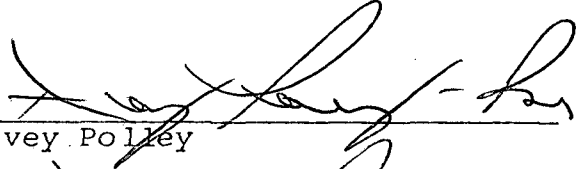
(e) Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

(f) Waiver. The waiver of any breach of any term or condition hereof shall not be deemed a waiver of any other or subsequent breach, whether of like or different nature.

(g) Severability. If any term or provision of this Agreement or the performance thereof shall to any extent be invalid or unenforceable, such invalidity or unenforceability shall not affect or render invalid or unenforceable any other provision of this Agreement, and this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year set forth below.

RAILWAY FREIGHT CAR SERVICES, INC.

BY:   
Harvey Polley

  
OWNER



Robert C Lutz  
OWNER

Stephen Craig Lindner  
OWNER

Carl H Lindner III  
OWNER

R F Walker  
OWNER

Sandra W Heerman  
OWNER

Keith E Lindner  
OWNER

Allen L Davis  
OWNER

L B Brubaker  
OWNER

STATE OF OHIO )  
: SS.  
COUNTY OF HAMILTON)

Before me this 1st day of April, 1980,  
the Subscriber, a Notary Public, in and for said County and State,  
personally appeared Robert Lutz, Stephen Lindner, Carl Lindner III, R F Walker, Sandra Heerman, Keith Lindner, Allen Davis, Lynn Brubaker  
the Owners who executed the foregoing instrument and acknowledged  
that they did sign said instrument on their own behalf and with  
full power and authority, that the execution of said instrument  
is their free and voluntary act.


IN TESTIMONY WHEREOF, I have hereunto subscribed my name and  
affixed my Notarial Seal this 1st day of April, 1980.

Richard P Siegel  
RICHARD SIEGEL  
NOTARY PUBLIC  
Notary Public, State of Ohio  
My Commission has no Expiration date  
Section 147.03 R. C.

STATE OF ~~OHIO~~FLA )  
                  DUAL : SS.  
COUNTY OF ~~HAMILTON~~)

Before me, the Subscriber, a Notary Public in and for said County and State, personally appeared Harvey Polley, President, of Railway Freight Car Services, Inc., the corporation which executed the foregoing instrument, who acknowledged that he did sign said instrument as such officer on behalf of said corporation, and by authority of its Board of Directors, and that the execution of said instrument is his free and voluntary act and deed individually and as such officer, and the free and voluntary act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my Notarial Seal this 2 day of April, 1980.

  
NOTARY PUBLIC

Notary Public, State of Florida at Large  
My Commission Expires May 23, 1980  
Bonded By American Fire & Casualty Company



STATE OF FLORIDA )  
 )  
COUNTY OF DUVAL ) SS.

Before me this 2 day of April, 1980,  
the Subscriber, a Notary Public, in and for said County and State,  
personally appeared Harvey Polly, Lessee, who executed the fore-  
going instrument and acknowledged that he did sign said instrument  
on his own behalf and with full power and authority, that the  
execution of said instrument is his free and voluntary act.

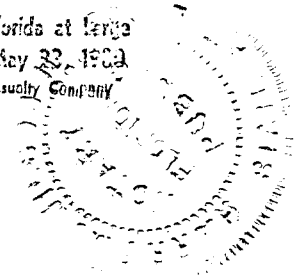
IN TESTIMONY WHEREOF, I have hereunto subscribed my name  
and affixed my Notarial Seal this 2 day of April, 1980.

Harvey M. Mikorud  
NOTARY PUBLIC

(SEAL)

My Commission expires \_\_\_\_\_

Notary Public, State of Florida at Large  
My Commission Expires May 22, 1982  
Bonded By American Fire & Casualty Company



SCHEDULE I

TO

AGENCY AND POOLING AGREEMENT

<u>Owners</u>	<u>Number of Units</u>	<u>Manager's Road Number</u>
B & R Company P. O. Box 1831 Cincinnati, Ohio 45202	7	13,005, 13,010, 13,026, 13,024, 13,025, 13,027, 13,028
Sandra W. Heimann One East Fourth Street Cincinnati, Ohio 45202	7	13,007, 13,014, 13,016, 13,029, 13,030, 13,031, 13,032
Robert C. Lintz One East Fourth Street Cincinnati, Ohio 45202	7	13,008, 13,017, 13,033, 13,034, 13,035, 13,036, 13,037
Carl H. Lindner, III 580 Walnut Street Cincinnati, Ohio 45202	6	13,018, 13,038, 13,039, 13,040, 13,041, 13,042,
Stephen Craig Lindner One East Fourth Street Cincinnati, Ohio 45202	5	13,019, 13,043, 13,044, 13,045, 13,046
Keith Edward Lindner One East Fourth Street Cincinnati, Ohio 45202	4	13,020, 13,021, 13,022 13,023
Allen L. Davis One East Fourth Street Cincinnati, Ohio 45202	2	13,047, 13,048
J. Lynn Brewbaker One East Fourth Street Cincinnati, Ohio 45202	2	13,049, 13,000
Harvey Polly, Lessee Railway Freight Car Services, Inc. North Shore Towers 269-10C Grand Central Parkway Floral Park, New York 11005	10	13,001, 13,002, 13,003, 13,004, 13,006, 13,009, 13,011, 13,012, 13,013, 13,015

EXHIBIT A

TO

AGENCY AND POOLING AGREEMENT

<u>Specifications</u>	<u>Maximum Quantity</u>	<u>Manager's Road Number (Both Inclusive)</u>	<u>Delivery</u>
100 Ton, 52'-6" Gondola Cars	50	CAGY 13,000- 13,049	March, 1980 at Chicago, Illinois

Exhibit B

---

---

MANAGEMENT AGREEMENT

BETWEEN

RAILWAY FREIGHT CAR SERVICES, INC.  
AS OWNER

AND

COLUMBUS & GREENVILLE RAILWAY COMPANY  
AS MANAGER

DATED AS OF MARCH 25, 1980

(COVERING UP TO 50 - 52'6" 100 TON GONDOLAS).

---

---

Filed and recorded with the Interstate Commerce  
Commission pursuant to Section 11303 of Title 49,  
United States Code on March \_\_\_\_, 1980, at  
\_\_\_\_\_, Recordation No.  
\_\_\_\_\_.

I N D E X\*

	<u>Page</u>
Recitals.....	
1. Provision and Ownership Management of Equipment.....	1
2. Delivery and Acceptance of Equipment.....	1
3. Term.....	1
4. Interline Use of Equipment.....	2
5. Remittance of Earnings.....	2
6. Management Charges.....	3
7. Identification Marks.....	5
8. Taxes.....	6
9. Reports and Records.....	8
10. Condition of Equipment and Compliance with Laws and Rules.....	10
11. Maintenance of Equipment.....	11
12. Default.....	12
13. Return of Equipment upon Default.....	14
14. Assignment, Merger of Manager.....	15
15. Assignment by Owner.....	16
16. Return of Equipment upon Expiration of Term.....	17
17. Manager's Warranties.....	18
18. Owner's Warranties; Indemnification.....	19
19. Ownership of Equipment; Federal Income Taxes.....	20
20. Insurance.....	21
21. Recording; Expenses.....	21

\*This Index is included for convenience only and does not form a part of, or affect any construction or interpretation of this Instrument.

	<u>Page</u>
22. Interest on Overdue Payments.....	22
23. Notices.....	22
24. Right to Perform.....	22
25. Additional Covenants of Manager.....	23
26. Additional Equipment.....	25
27. Severability; Effect and Modification of Management Agreement; Owner.....	26
28. Execution.....	26
29. Law Governing.....	26
30. Miscellaneous.....	27



MANAGEMENT AGREEMENT, dated as of March 25, 1980, between RAILWAY FREIGHT CAR SERVICES, INC., a New York corporation as agent for the owners listed in Schedule I to that certain Agency and Pooling Agreement dated as of March 25, 1980 (hereinafter called "Owner") and COLUMBUS & GREENVILLE RAILWAY COMPANY, a Mississippi corporation (hereinafter called "Manager").

WHEREAS, Owner has agreed to purchase from the manufacturer, Thrall Car Manufacturing Company (the "Manufacturer"), certain units of railroad equipment (hereinafter individually called a "Unit" and collectively the "Equipment") described in Schedule No. 1 hereto (hereinafter called "Schedule No. 1") substantially in the form of Exhibit A hereto, being simultaneously executed and delivered by the parties hereto; and

WHEREAS, Owner desires to provide the Equipment to the Manager so that Manager may manage the Equipment pursuant to the terms of this Management Agreement, and Manager desires to take possession of and responsibility as hereinafter set forth for the Equipment, and to manage the Equipment pursuant to the provisions hereof;

NOW, THEREFORE, in consideration of the foregoing premises and of the mutual covenants hereinafter contained, the parties hereto hereby agree as follows:

1. Provision and Ownership/Management of Equipment. Owner hereby agrees to provide the Equipment to Manager, and Manager agrees to accept and manage the Units, upon the terms and conditions hereinafter set forth.

2. Delivery and Acceptance of Equipment. Owner will cause each Unit to be delivered to Manager at the point or points within the United States of America at which Owner shall specify. Upon such delivery, Manager, at Owner's expense, will cause an authorized representative of Manager to inspect the Equipment, and if such Equipment is acceptable to such authorized representative and conforms to all applicable governmental regulations, to accept delivery of such Equipment and to execute and deliver to Owner a certificate of acceptance (hereinafter called a "Certificate of Acceptance"). The Certificate of Acceptance shall be in the form annexed as Exhibit A hereto, dated as of date of acceptance of the Equipment (such date of delivery being hereinafter called the "Delivery Date") and certify that each Unit is marked in accordance with Section 7 hereof; whereupon each such Unit shall be deemed to have been delivered to and accepted by Manager, and shall be subject thereafter to all the terms and conditions of this Management Agreement.

3. Term. The initial term of this Management Agreement (hereinafter called the "Initial Term") as to each Unit shall begin on the date of the delivery to and acceptance by Manager of such Unit pursuant to Section 2 above and shall terminate with respect to all Equipment on March 31, 1995; provided, however, this Management Agreement shall automatically be extended for not more than Five (5) successive periods of Twelve (12) months each (hereinafter called an "Extended Term") with respect to all Equipment not suffering a Casualty Occurrence (as hereinafter defined) unless Owner or Manager gives written notice to the other delivered not less than Six (6) months prior to the end of the Initial Term or any Extended Term of its intention to terminate this Management Agreement, in which case this Management Agreement shall terminate as to all, but not less than all, of the Equipment on the last day of the Initial Term or the Extended Term set forth in such notice.

The obligations of (i) Manager to make the Remittances (as hereinafter defined) due and payable hereunder, and (ii) the Owner to reimburse Manager for maintenance expenses, taxes and other amounts hereinafter required to be reimbursed by Owner, with respect to obligations arising during the Initial Term or any Extended Term, shall survive the expiration of the Initial Term or any Extended Term of this Management Agreement.

4. Interline Use of Equipment. Manager shall cause the Equipment to be loaded and placed into interline interchange service in the United States of America, in accordance with Interstate Commerce Commission ("ICC") and Association of American Railroads ("AAR") Interchange Rules and Agreements as soon as practicable after the respective Delivery Dates, and shall cause the Equipment to continue to be used in such interline interchange service throughout the term of this Management Agreement.

In order to obtain maximum utilization of the Equipment, Manager shall use its good faith best efforts to obtain railroad car loadings on its tracks with shipments destined for locations off Manager's tracks for the Equipment (such shipments being hereinafter called "Outbound Loadings"); and Manager shall give preference on Outbound Loadings to the Equipment and shall load the Equipment prior to any other railroad equipment similar to the Equipment, provided, the preferences described herein shall in no event prevent or prohibit Manager from fulfilling its obligations to provide transportation and facilities upon reasonable request to shippers on its tracks.

5. Remittance of Earnings. Manager shall cause all amounts paid to Manager from railroads having different AAR markings from

those of Manager ("Other Railroads") or from any other party for use of or relating to the Equipment including, without limitation, mileage charges, straight car hire payments, penalties and incentive car hire payments to the fullest extent permitted by law, to be paid directly to Owner or as Owner shall direct. Any such payments received by Manager shall be held in trust and forthwith paid to Owner, together with an accounting thereof. (All amounts payable to Owner pursuant to the provisions of this Section 5 are hereinafter sometimes collectively referred to as "Remittances").

Manager shall use its best efforts to secure payment from all Other Railroads over whose tracks the Equipment travels and from any other party using the Equipment any and all sums which may be due from time to time from such Other Railroads or party with respect to the Equipment including, without limitation, mileage charges, straight car hire payments, penalties and incentive car hire payments.

6. Management Charges.

A. Owner agrees to pay the following management fee to Manager for the management of the Equipment hereunder:

1. Owner shall receive all of the mileage charges and car hire revenue (including, without limitation both straight and incentive per diem) payable to Manager by Other Railroads relating to the Equipment if the utilization of all the Equipment on an aggregate basis for each period of Twelve (12) months ("Fee Year"), the first such period commencing on the commencement date of the Initial Term of the first Unit accepted hereunder, shall be equal to or less than Seventy-Seven Percent (77%) of the maximum that they could earn in that Fee Year if the Equipment was used exclusively on the tracks of Other Railroads during each day of such Fee Year (hereinafter "Maximum Utilization"). In the event that utilization exceeds Seventy-Seven Percent (77%) in any Fee Year, Manager shall be entitled to receive as a management fee (a) all excess straight and incentive per diem revenues and penalties (but not mileage charges) in excess of Seventy-Seven (77%) of Maximum Utilization, and (b) Twenty-Three Percent (23%) (or the complement of the utilization rate determined in the immediately succeeding proviso in the event of any adjustments) of all extraordinary mileage charges enacted after the date hereof (which are not normal inflationary increases) in excess of .1262 cents per mile converted to a daily rate assuming

each Unit travels 50 miles per day each day of such Fee Year (such daily rate hereinafter "Base Mileage Charge"); provided, however, in the event the ICC shall issue an order or any applicable law or regulation shall be amended, modified or enacted which shall have the effect of eliminating or in any way reducing the incentive per diem charges payable (as, for example, by reducing the period in which such charges are payable) for use of the Equipment, or such charges are reduced or eliminated to Owner for any other reason whatsoever, unless there is made available to be received by the Owner, a corresponding increase in per diem payments or other similar car hire charges, at least equal to the reduction or elimination of incentive per diem charges, the Manager shall be entitled to receive as a management fee only (a) the straight and incentive per diem revenues (but not mileage charges) in excess of a percentage of Maximum Utilization equal to the sum of (x) Seventy-Seven (77) and (y) an amount equal to a fraction of which (i) the numerator shall be the amount by which the daily (or as otherwise posted by the ICC) incentive per diem charges were reduced less all extraordinary mileage charges (which are not normal inflationary increases) enacted after the date hereof expressed as a daily rate up to a maximum of \$3.39, (hereinafter the "Mileage Credit") and (ii) the denominator of which shall be the daily (or as otherwise posted by the ICC) incentive per diem charges immediately prior to the elimination or reduction less the Mileage Credit, times (z) Eight (8) minus the sum of all prior adjustments hereunder, and (b) all extraordinary mileage charges enacted after the date hereof (which are not normal inflationary increases) in excess of the Base Mileage Charge times the complement of the utilization percentage as adjusted in the immediately preceding subsection (a). Such management fee shall be applicable for each Unit from the date of acceptance as provided in Section 3 (or from the date of any adjustment hereunder, as may occur from time to time) and until such Unit is returned to Owner upon expiration or termination of this Agreement.

2. The management fee shall accrue and be payable to Manager for each Fee Year as provided below:

Subject to the annual adjustment contained herein, Owner shall pay to Manager quarterly, the first such quarter to commence on the commencement date of the first Fee Year, the amount of the

management fee which Owner determines in good faith is necessary so that Manager will receive for the period from the commencement of such Fee Year, to the end of such quarter, a management fee based on the utilization experienced by the Equipment; on an aggregate basis, during such Fee Year, up to the last day of such quarter. Each such quarterly determination shall be made by Owner within Sixty (60) days after the end of each quarter, and the amount of such management fee, as so determined, shall be paid to Manager on or before the Sixtieth (60th) day following each quarter. Within Sixty (60) days after the end of each Fee Year, the actual amount of such management fee for such Fee Year shall be finally determined by Owner, and any additional amount owing to Manager, or any amount to be refunded to Owner, shall promptly be remitted to the appropriate party within Ten (10) days after written notice of the final amount, as so determined, has been furnished to Manager by Owner.

3. In the event irreparable damage or destruction of a Unit has been reported in accordance with Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Hire Rules - Freight and the appropriate amount due as a result thereof is received by Owner, said irreparably damaged or destroyed Unit will be removed from this Agreement as of the date that payment of car hire revenues ceased; provided, however, such Unit will be removed from this Agreement for purposes of computing the management fee (including any adjustments) hereunder only for one half (1/2) of the period commencing with the date that payment of car hire revenues cease until all repairs necessary to rebuild such Unit are completed, and the Manager shall undertake to rebuild such Unit as soon as practicable.

B. Owner may, at its option, terminate this Agreement upon not less than Thirty (30) days prior written notice, if the aggregate of the car hire charges and other income due and payable from Other Railroads for use of the Equipment shall in any Ninety (90) day period be less than Seventy Percent (70%) (as adjusted by the amount of any adjustment to utilization computed in accordance with subsection (a) of the proviso contained in subsection (A)(1) above).

7. Identification Marks. Manager will cause each Unit to be kept numbered with the identifying number set forth in Schedule

No. 1, or in the case of any Unit not therein listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Management Agreement to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the following words:

"MORTGAGED TO A FINANCIAL INSTITUTION UNDER A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION"

or other appropriate words designated by Owner with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Owner's interest in such Unit and the rights of Manager under this Management Agreement. Manager will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. Manager will not change the identifying number of any Unit unless and until (i) a statement of a new number or numbers to be substituted therefor shall have been filed with Owner and filed, recorded and deposited by Manager in all public offices where this Management Agreement shall have been filed, recorded and deposited, including, without limitation, the ICC, the Official Railway Equipment Register and the Universal Machine Language Equipment Register, and (ii) Manager shall have furnished to the Owner an opinion of counsel to the effect set forth in paragraph (C) of Section 25 hereof in respect of such statement.

Except as provided above, Manager will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that Manager may cause the Equipment to be lettered with the names or initials or other insignia customarily used by Manager or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to manage the Equipment and to collect revenues as permitted under this Management Agreement.

8. Taxes. Manager shall, subject to reimbursement from the Owner as hereinafter provided, pay and discharge all sales, use, personal property, stamp or other taxes, levies, imposts, duties, charges or withholdings of any nature, together with any penalties, fines or interest thereon (the foregoing being hereinafter called "Impositions") imposed against Owner, or any assignee, Manager or the Equipment by any Federal, state or local government or taxing authority upon or with respect to the Equipment or upon the purchase, ownership, delivery, possession, use, operation, return, sale or other disposition thereof hereunder or in connection herewith, or upon the receipts or earnings arising

therefrom, or upon or with respect to this Management Agreement (excluding, however, taxes on, or measured by, the net income of Owner or any assignee thereof) unless, and to the extent only that, any such Imposition is being contested by Manager or Owner in good faith and by appropriate proceedings and the nonpayment thereof does not, in the reasonable opinion of Owner adversely affect the title, property or rights of Owner to or in the Equipment.

If any Imposition is levied against Manager and the Equipment is included in or as a basis for the calculation of such Imposition, then, (a) if such Imposition is apportioned by the appropriate taxing authority between the Equipment and the other property owned or used by Manager, then Owner shall have the right (but not the obligation) to contest such apportionment, at its own expense, by any proceedings Owner deems appropriate under the circumstances, and (b) if such Imposition is not apportioned by the appropriate taxing authority between the Equipment and the other property owned or used by Manager, then such Imposition shall be apportioned between Owner and Manager on such basis as Owner and Manager shall agree or, failing such agreement, as may be determined by a majority decision of a panel of Three (3) independent arbitrators, one of whom shall be selected by Manager, one of whom shall be selected by Owner and the third to be selected by such designated arbitrators; provided, however, that if such Imposition is based upon the value of property, the portion of such Imposition apportioned to Owner shall in no event exceed the fraction thereof, the denominator of which is the value of all of the railroad equipment and all other property owned, used or managed by Manager (whether similar, personal or mixed) included in the property on which such Imposition is based, and the numerator of which is the value of the Equipment (with "value", in each case, determined in a manner consistent with the manner in which value is defined and calculated for the purpose of such Imposition under the laws, rules and regulations in effect during the period for which such Imposition is assessed). If Manager shall be entitled to any credit against any such Imposition or any other government charge, which credit shall arise as a result of any expenditure by Manager not related to the Equipment, then Manager shall be entitled to the full benefit of such credit.

Manager shall comply with all federal, state and local laws concerning the preparation and filing of tax returns with respect to the Equipment and shall provide copies of such returns to Owner not less than Thirty (30) business days prior to the filing of such return. Owner shall have the right to review all such tax returns prior to their filing and shall have the right to approve or object to any such tax returns or portions thereof which relate to the Equipment. Unless Owner objects to the

filing of such return and so notifies Manager before such return is filed, Owner shall be deemed to have approved such return. In the event Owner objects to the filing of such return as prepared by Manager, such return shall be revised as Owner and Manager shall agree and, failing such agreement, as Owner shall direct, unless Manager is advised by its independent legal counsel that such return would not be in compliance with any applicable governmental law, rule or regulation, in which event Owner may file such return on its own behalf if permitted to do so, and if not so permitted by applicable law, Manager shall file such return as it determined to be proper and correct under applicable law.

To the extent permissible under applicable laws, Owner shall have the right but not the obligation to pay any personal property or similar tax, assessment or other government charge with respect to the Equipment, in lieu of Manager paying such Imposition, and upon agreeing to pay such Imposition, Owner shall be freed of its obligation to reimburse Manager with respect thereto under the provisions of this Section 8.

For purpose of this Section 8, the term "Impositions" shall include, and Manager shall be entitled to reimbursement from Owner in accordance with the next succeeding paragraph for, any incremental taxes on personal property paid by Manager as a result of or arising out of its performance of the transactions contemplated hereby. Such incremental taxes shall be the difference between (i) the amount of such personal property taxes actually paid by Manager (whether during the term of this Agreement or after its expiration), and (ii) the amount of taxes on personal property which Manager would have paid in the absence of this Agreement and the transactions contemplated hereby. In the event Manager and Owner cannot agree upon the amount of such incremental taxes on personal property, either party may demand that such dispute be resolved by a panel of Three (3) arbitrators in the manner set forth in the second paragraph of this Section 8, in which case the dispute shall be submitted for arbitration and the decision of a majority of the panel of arbitrators shall be binding upon the parties.

Upon delivery of an invoice therefor from Manager, Owner shall reimburse Manager within Thirty (30) days after receipt of such invoice for all Impositions so invoiced by Manager with respect to the Equipment, except such Impositions (i) on, based upon or measured by net income from the Equipment earned by or imposed on Manager, (ii) penalties assessed against Manager because of its failure to comply timely with any applicable governmental law, rule or regulation, and (iii) Impositions, the amount of which are under dispute and being submitted to arbitration pursuant to the preceding paragraph.



9. Reports and Records. On or before March 31 in each year, commencing with the year 1981, Manager shall furnish to Owner an accurate statement signed by an executive officer of Manager (a) setting forth as of the preceding December 31 the amount, description and numbers of all Equipment then subject to this Agreement, the amount, description and numbers of all Equipment that have suffered a Casualty Occurrence or are then undergoing repairs (other than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as Owner may reasonably request, (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Section 7 hereof have been preserved or replaced, and (c) certifying that all amounts, whether Remittances or otherwise, payable hereunder by Manager to Owner through the preceding December 31 have been paid, or if any have not been paid, identifying such unpaid amounts and the reason for their nonpayment, and (d) the amount, description and numbers of all Gondola cars purchased, leased or managed by Manager after the date of this Agreement. Owner and any agent of Owner shall have the right to inspect the Equipment and the Manager's records with respect thereto at such reasonable time as they may request during the term of this Agreement.

Manager also shall furnish to Owner commencing for the calendar year 1980 (i) within One Hundred Twenty (120) days after the end of each fiscal year of Manager, a consolidated balance sheet of Manager and its consolidated subsidiaries as at the close of such fiscal year and consolidated statements of income and retained earnings and changes in financial position of Manager and its consolidated subsidiaries for such year, certified by independent public accountants; and (ii) within Ninety (90) days after the end of the first Three (3) quarters of each fiscal year of Manager, a consolidated balance sheet of Manager and its consolidated subsidiaries as at the end of such quarter and consolidated statements of income and retained earnings of Manager and its consolidated subsidiaries for the period from the beginning of such fiscal year for the end of such quarter, signed by an authorized financial officer of Manager. All financial statements delivered hereunder shall be prepared on the basis of generally accepted accounting principles and practices applied on a basis consistently maintained throughout the period involved.

Owner retains the risk of loss, damage or destruction of the Equipment. In the event that any Unit shall be or become worn

out, lost (for a period of at least Thirty (30) consecutive days), stolen, destroyed or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation, confiscation, seizure, forfeiture or otherwise, or there shall occur any other material interruption or termination of use of any Unit regardless of the cause (such occurrences being hereinafter called a "Casualty Occurrence"), during the term of this Management Agreement, Manager shall, within Ten (10) days after manager receives notice such Unit has suffered a Casualty Occurrence, fully notify Owner with respect thereto.

Manager shall use its best efforts to prepare and deliver to Owner at least Ten (10) days prior to the required date of filing (or, to the extent permissible, file on behalf of Owner) any and all reports (other than income tax returns) relating to maintenance, registration and operation of the Equipment to be filed by Owner or Manager with any federal, state or other regulatory authority by reason of the ownership of the Equipment, the security interest in the Equipment or providing such Equipment to Manager. Such documents shall include, but are not limited to, registration with the ICC, in the Official Railway Equipment Register and in the Universal Machine Language Equipment Register and any and all reports which may be required from time to time by any governmental agency with jurisdiction over Owner, Manager or the Equipment. Manager shall perform all record keeping functions relating to use of the Equipment, and shall maintain records relating thereto whether such use is by Manager or Other Railroads, all in accordance with AAR Interchange Agreements and Rules. Such records shall include, but not be limited to, car hire reconciliations. Manager shall supply Owner and any assignee with copies of such records regarding use of the Equipment as Owner or any assignee may reasonably request. All records maintained hereunder, including all records of payments received in connection with the use of the Equipment, or expended in connection with the maintenance of the Equipment, charges and correspondence relating to the Equipment shall be separately recorded and maintained by Manager in a form suitable for reasonable inspection by Owner or its assignee from time to time during Manager's regular business hours.

Manager shall, upon written request of Owner, in its sole discretion, make such request with AAR for relief or reinstatement from AAR Car Service Rules 1 and 2 as Owner may from time to time specify; provided, however, Manager shall not be required to make such a request for relief unless in any Sixty (60) day period the aggregate of the car hire charges and other income due and payable from Other Railroads in respect of the use of the Equipment shall in such Sixty (60) day period be less than Seventy-Seven Percent (77%) (or such other percentage of utiliza-

tion used to determine payment of the management fee if such management fee is adjusted under Section (6)(A)(1) of this Agreement) of Maximum Utilization for each of said Sixty (60) days; provided, further, upon receipt of a written request from Owner under this paragraph of Section 9, so long as Manager shall pay to Owner an amount equal to the amount that Owner would receive under Sections 5 and 6 hereof if the Equipment was utilized One Hundred Percent (100%), Manager shall not be obligated to file the request with AAR hereunder.

10. Condition of Equipment and Compliance with Laws and Rules. Manager's delivery of a Certificate of Acceptance shall be conclusive evidence that Manager has accepted the Equipment described therein and that each Unit is in all respects satisfactory to Manager for the purpose of managing such Unit hereunder, and MANAGER WILL NOT ASSERT ANY CLAIM OR DEFENSES HEREUNDER BASED ON THE DESIGN, WORKMANSHIP, QUALITY, CONDITION OR MERCHANTABILITY OF THE EQUIPMENT.

Manager agrees, for the benefit of Owner, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the AAR and with all rules of the Department of Transportation, the ICC and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, Manager, at Owner's expense, will conform therewith; provided, however, that Manager or Owner may in good faith contest, at the expense of the contesting party, the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of Owner, adversely affect the property or rights of Owner and does not result in a Unit being removed from the regular interline interchange service contemplated hereby; and provided, further, that no such alterations, modifications or replacement of parts shall be made without the prior authorization of Owner unless made by a railroad other than Manager without the prior approval of Manager.

Title to any such alteration, replacement or addition of or to any part on any Unit shall be and remain with Owner.

11. Maintenance of Equipment. Manager shall inspect all Equipment interchanged to insure that such Equipment is in good working order and condition in the same manner as Manager inspects railroad equipment owned by it; and Manager shall be liable to

Owner for all costs, expenses, fees and charges incurred in connection with any repairs required for damage existing but not noted at the time of such interchange. Manager shall at all times keep the Equipment in good repair and efficient condition and working order, eligible for interchange with Other Railroads pursuant to AAR Interchange Standards, and, subject to the foregoing, Owner shall pay all costs, expenses, fees and charges incurred in connection with repairs, maintenance and servicing of the Equipment. All parts, replacements, substitutions and additions to or for any Equipment shall immediately become Equipment and the property of Owner. At Owner's cost and expense, Manager, at its discretion, shall make running repairs ("Running Repairs") to facilitate the continued and immediate use of the Equipment. Charges to Owner by Manager for all repairs, maintenance and servicing performed by Manager pursuant to the provisions hereof shall be in an amount not in excess of comparable charges for similar work on railroad equipment charged by recognized maintenance firms for similar repairs and in any event shall not exceed AAR Standard Rates as in effect at the time of such repairs, maintenance and service, or such other rules which supersede or replace AAR Standard Rates.

Anything herein to the contrary notwithstanding, Manager shall promptly notify Owner of the need for any maintenance or repairs, other than Running Repairs, and Owner shall have the right to require that any or all such alterations, modifications, replacements, repairs, maintenance and/or servicing on any or all of the Equipment be performed by Manager, Owner, one or more Other Railroads or others able to do such work, in which event the cost of transporting the Equipment to such Other Railroads shall be borne by Owner. Promptly upon request therefor from Manager, Owner will reimburse Manager for all costs, expenses, fees and charges incurred in connection with repairing, maintaining and servicing the Equipment, unless any such repairs, maintenance or servicing was (or were) (i) occasioned by the negligence or willful misconduct of Manager or any of Manager's agents or employees or (ii) would be deemed a "handling line responsibility" pursuant to Rule 96 of the AAR Field Manual as in effect at the time, or such other rule which supersedes or replaces such provision and whenever the Equipment is on Manager's railroad tracks, Manager shall comply with Rule 7 of the AAR Car Service and Car Hire Agreement Code of Car Service Rules-Freight ("Rule 7").

12. Default. If, during the continuance of this Management Agreement, one or more of the following events (each such event being hereinafter sometimes called an "Event of Default") shall occur and be continuing:

A. default shall be made in the payment by Manager of

any sum required to be paid or remitted hereunder, and such default shall continue for a period of Five (5) days after notice from Owner that it believes such payment is due;

B. any representation or warranty, made by Manager in this Management Agreement is untrue in any material respect, or any statement, report, schedule, notice or other writing furnished by Manager to Owner in connection herewith is untrue in any material respect on the date as of which the facts set forth are stated or certified;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of Manager contained herein, and such default shall continue for Ten (10) days after written notice thereof from Owner to Manager;

D. any act of insolvency by Manager, or the filing by Manager of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors; or

E. the filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Manager that is not dismissed within Sixty (60) days thereafter, or the appointment of any custodian to take possession of the properties of Manager, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within Sixty (60) days from the date of said filing of appointment;

then, in any such case, Owner at its option may:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by Manager of the applicable covenants of this Management Agreement (and Manager agrees to bear Owner's costs and expenses, including reasonable attorneys' fees, in securing such enforcement) or to recover damages for the breach thereof; and/or

(b) by notice in writing to Manager, terminate this Management Agreement, whereupon all rights of Manager hereunder to manage the Equipment shall absolutely cease and terminate as though this had never been made, but Manager shall remain liable as hereinafter provided; and/or

(c) by its agents enter upon the premises of Manager or other premises where any of the Equipment may be and take

possession of all or any of such Equipment and thenceforth hold, possess and enjoy the same free from any right of Manager, or its successors or assigns, to use the Equipment for any purposes whatever;

but Owner shall, nevertheless, have a right to recover from Manager any and all amounts which under the terms of this Management Agreement may be then due or which may have accrued to the date or subsequent to the date of such termination and also to recover forthwith from Manager; (i) any damages and expenses, including reasonable attorneys' fees, in addition thereto which Owner shall have sustained by reason of the breach of any covenant, representation or warranty of this Management Agreement, and (ii) all costs and expenses incurred in searching for, taking, removing, keeping and storing such Equipment, and (iii) all additional amounts owing by Manager hereunder, whether as Remittances or otherwise.

The remedies in this Management Agreement provided in favor of Owner shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. Manager hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. Manager hereby waives any and all existing or future claims to any offset against the Remittances or any other payments due Owner hereunder and agrees to make such Remittances and all other payments as directed regardless of any offset or claim which may be asserted by Manager or on its behalf.

The failure of Owner to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

The nonpayment by Owner of any sum required herein to be paid or reimbursed by Owner to Manager not later than Thirty (30) days after such payment is due shall be a default (hereinafter called an "Owner Default") by Owner hereunder. Upon the occurrence of such an Owner Default, Manager shall have such other rights as may be available to it at law or in equity. In the event Owner disputes the occurrence of an Owner Default claimed by the Manager, such dispute or disagreement may be submitted, upon the request of the parties, to a panel of Three (3) independent arbitrators, one of whom shall be selected by Manager, one of whom shall be selected by Owner, and the third to be selected by such designated arbitrators. The determination of a majority

of such arbitrators as to such dispute or disagreement shall be binding upon both parties hereto.

13. Return of Equipment upon Default. If an Event of Default shall occur and be continuing or if this Management Agreement shall terminate pursuant to Section 12 hereof, Owner may take, or cause to be taken or demand from Manager, immediate possession of the Equipment, or any Unit thereof, and may remove the same from possession and use of Manager. For such purpose, Owner may enter upon the premises of the Manager or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids, including but not limited to diesel fuel or other necessary petroleum products, and any available trackage and other facilities or means of Manager, with or without process of law.

In case Owner shall demand possession of the Equipment pursuant to this Section and shall designate a reasonable location or locations on the lines or premises of Manager or points at which the lines of Manager connect with the lines of any other railroad for the delivery of Equipment to Owner, Manager shall, at its own cost, expense and risk, forthwith and in its usual manner, cause the Equipment to be moved to such location or locations on Manager's lines or interchange point or points and shall there deliver the Equipment or cause it to be delivered to Owner and if so requested by Owner, Manager shall, at its own expense and without the right to any reimbursement (except as hereinafter specifically provided to the contrary), obliterate any insignia or other identifying markings or lettering it has theretofore placed on the Equipment and restore the exterior to its original appearance, wear and tear otherwise hereunder permitted being excepted. At the option of Owner, Owner may keep the Equipment on any of the lines or premises of Manager until Owner shall have entered into a management agreement, leased, sold or otherwise disposed of the same (whether by public or private sale or otherwise), and for such purpose, Manager agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by Owner reasonably convenient to Manager; provided such storage without rent shall not exceed a period of One Hundred Twenty (120) days from the date Manager makes the last Unit of the Equipment available to Owner. During any storage period, Manager will permit Owner or any person designated by it, including the authorized representative or representatives of any prospective manager, purchaser or lessee of any such Unit, to inspect the same. Without in any way limiting the obligation of Manager under the foregoing provisions of this Section 13, Manager hereby irrevocably appoints Owner as the agent and attorney of Manager with full power and

authority, including the power of substitution, at any time while Manager is obligated to deliver possession of any Unit to Owner to demand and take possession of such Unit in the name and on behalf of Manager from whomsoever shall be in possession of such Unit at the time. This Agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and upon application to any court of equity having jurisdiction in the premises, Owner shall be entitled to a decree against Manager requiring specific performance hereof.

Manager hereby expressly waives any and all claims against Owner, and its assigns or agents for damages of whatever nature in connection with the retaking of any Unit of the Equipment in any reasonable manner.

14. Assignment, Merger of Manager. Without the prior written consent of Owner, Manager shall not assign or transfer its interest or except as expressly permitted herein, delegate any of its duties, under this Management Agreement or in or to or with respect to the Equipment, and any attempted assignment or transfer shall be of no force or effect.

So long as Manager shall not be in default under this Management Agreement, Manager shall be entitled to manage the Equipment and to permit the use of the Equipment upon railroads in the usual interline interchange of railway traffic, but only upon and subject to all the terms and conditions of this Management Agreement; provided, however, that Manager (to the fullest extent permitted by applicable law) shall use its best efforts to present the assignment or use of any Unit to service involving the regular operations and maintenance thereof outside the United States or any Unit to be outside the United States. No assignment, lease or interchange entered into by Manager hereunder shall relieve Manager of any liability or obligation hereunder.

Nothing in this Section 14 shall be deemed to restrict the right of Manager to assign or transfer its rights and interest under this Management Agreement to any corporation (which shall have expressly assumed in writing the due and punctual payment and performance of all obligations hereunder of Manager) into or with which Manager shall have become merged or consolidated or with which Manager acquired the property of Manager as an entirety or substantially as an entirety.

15. Assignment by Owner. Owner and any direct or remote assignee of any right, title or interest of Owner hereunder shall have the right at any time or from time to time to assign part or all of its right, title and interest in and to this



Management Agreement, but Manager shall be under no obligation to any assignee except upon written notice of such assignment from Owner.

Owner may grant at any time a security interest or other lien on any and all of the Equipment, this Management Agreement and sums due under this Management Agreement to a financial institution or other assignee (hereinafter "Secured Party"). In such event (a) upon request by Owner or Secured Party, Manager will (i) cause all amounts payable to Manager from Other Railroads or from any other party for the use of or relating to the Equipment, including, without limitation, mileage charges, straight car hire payments, penalties and incentive car hire payments, to the fullest extent permitted by law, to be paid directly to Secured Party or as Secured Party shall direct, (ii) hold in trust any such amounts received by Manager and forthwith pay the same to Secured Party, together with an accounting therefor, and (iii) make payment of all Remittances and other payments due or to become due under or arising under this Management Agreement directly to the Secured Party or as the Secured Party may direct; (b) Manager's obligations hereunder, including (without limitation) its obligation to make the Remittances described in Section 5 hereof, shall not be subject to any reduction, abatement, defense, setoff, counterclaim or recoupment for any reason whatsoever, which, however, shall not prevent Manager from asserting any claim separately against Owner; (c) Manager will not, after obtaining knowledge of any such assignment, consent to any modification of this Management Agreement without the prior written consent of Secured Party; and (d) Manager will provide to Owner and Secured Party such certificates, statements or other information as Owner may from time to time reasonably request, including, without limitation, a "no-default certificate".

16. Return of Equipment Upon Expiration of Term. As soon as practicable on or after the expiration, or earlier termination pursuant to Section 6(B), of the term of this Management Agreement with respect to any Unit, Manager shall deliver possession of such Unit to Owner or as Owner shall direct upon such storage tracks of Manager or to such interchange point or points of Manager as the Owner reasonably may designate, provided that such storage on Manager's storage tracks does not interfere with the operation of the railroad of Manager. Manager will permit Owner to store any such Unit on such tracks for a period not exceeding One Hundred Twenty (120) days after delivery of possession to Owner hereunder and transport the same, at any time within such One Hundred Twenty (120) day period, to any reasonable place on the lines of railroad operated by Manager, or to any connecting carrier for shipment, all as directed by Owner, such movement and storage of any such Unit on the storage tracks of

Manager to be at the expense and risk of Owner. During said One Hundred Twenty (120) day storage period and at the expiration thereof, Manager agrees to transport the Equipment to any other reasonable place designated by Owner, the movement of such Equipment to such places (other than to the places set forth in the immediately preceding sentence) to be at the expense and risk of the Owner. Manager shall remit to Owner promptly upon receipt thereof, any and all income earned and received by Manager for use of such Equipment by others, including all income received from users pursuant to the ICC Car Hire Rate Table (hereinafter "Gross Revenues") during such movement, and the Manager shall use its best efforts to realize such Gross Revenues on such Equipment during such movement. During any storage period provided herein, Manager will permit Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser, manager or lessee, of such Equipment, to inspect the same; provided, however, that Manager shall not be liable, except in the case of negligence or willful misconduct of Manager or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of Owner or any prospective purchaser, manager or lessee, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Management Agreement, and upon application to any court of equity having jurisdiction in the premises, Owner shall be entitled to a decree against Manager requiring specific performance of the covenants of Manager to so assemble, deliver, store and transport the Equipment. Each Unit returned to the Owner pursuant to this Section 16 shall (i) be in the same operating order, repair and condition as when originally delivered to Manager, reasonable wear and tear excepted, (ii) meet the standards then in effect under the Interchange Rules of the AAR and/or the applicable rules of any governmental agency or other organization with jurisdiction for use of such Equipment in regular railroad interchange services, and if so requested by Owner, Manager shall, obliterate any insignia or other identifying markings or lettering it has theretofore placed on the Equipment and restore the exterior to its original appearance, wear and tear otherwise hereunder permitted being excepted.

17. Manager's Warranties. Manager represents and warrants that:

(a) Manager is a corporation duly organized and existing in good standing under the laws of the State of Mississippi and has the corporate power, authority and is duly qualified and authorized to do business wherever necessary to carry out its present business and operations and

to own its properties, manage the Equipment and to perform its obligations under this Management Agreement.

(b) The execution and delivery of this Management Agreement by Manager, and the performance by Manager of its obligations hereunder, do not conflict with any provision of law or of the charter or by-laws of Manager or of any indenture, mortgage, deed of trust or agreement or instrument binding upon Manager or to which Manager is a party.

(c) The execution, delivery and performance of this Management Agreement by Manager and the consummation by Manager of the transactions contemplated hereby do not require the consent, approval or authorization of, or notice to, any federal, state or local governmental authority or public regulatory body.

(d) The balance sheet of Manager as at December 31, 1979 and the statements of income and retained earnings and of changes in financial position of Manager for the fiscal year ending on that date certified by T. E. Lott and Company, heretofore furnished to Owner, are complete and correct and fairly present the financial condition of Manager as at the date of such balance sheet and the results of its operations for the year covered thereby. Since December 31, 1979, there has been no material adverse change in the financial condition of Manager from that set forth in said balance sheet as at that date.

(e) This Management Agreement is a legal, valid, and binding obligation of Manager, enforceable in accordance with its terms.

(f) There are not any pending or threatened actions or proceedings before any court or administrative agency which will to a material extent adversely affect the financial condition or continued operation of Manager and its subsidiaries on a consolidated basis or the ability of Manager to perform its obligations under this Management Agreement.

(g) Manager is not a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as Manager can reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of Manager or the ability of Manager to perform its obligations under this Management Agreement.

18. Owner's Warranties; Indemnification. Owner represents and warrants that:

(a) Owner is a corporation duly organized and existing in good standing under the laws of the State of New York.

(b) Owner is duly authorized to execute and deliver this Management Agreement, and is duly authorized to own the Equipment and to perform its obligations hereunder.

(c) The execution and delivery of this Management Agreement by Owner and the performance by Owner of its obligations hereunder, do not conflict with any provision of law or of its charter or by-laws or of any indenture, mortgage, deed or trust or agreement or instrument binding upon it or to which it is a party.

(d) The execution, delivery and performance of this Management Agreement by Owner and the consummation by Owner of the transactions contemplated hereby do not require the consent, approval or authorization of, or notice to, any federal, state or local governmental authority or public regulatory body.

(e) There are not any pending or threatened actions or proceedings before any court or administrative agency which will to a material extent adversely affect the financial condition or continued operation of Owner or the ability of Owner to perform its obligations under this Management Agreement.

(f) To the best knowledge of the Owner, there is no fact which Owner has not disclosed to Manager in writing, nor, so far as Owner can now reasonably foresee, which will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of Owner or the ability of Owner to perform its obligations under this Agreement.

Manager hereby agrees to defend, indemnify and hold Owner, its employees, agents and assigns, harmless from and against any and all loss or damage, including any or all loss or damage to the Equipment, and to defend, indemnify and hold Owner, its employees, agents or assigns, harmless from and against any and all claims, damages or expenses (including legal fees and disbursements), incurred by or asserted against Owner, its employees agent or assigns, as the result of the ownership, possession, use or control of the Equipment by Owner, its employees, agents or assigns, as the case may be, and the management, possession,

use or control of the Equipment by Manager or its employees, agents or assigns, as the case may be, (collectively "Liabilities"); provided, however, that the foregoing obligations of Manager shall not extend to any Liabilities caused by or attributable to Owner's gross negligence or willful misconduct; provided, further, however, Manager's obligations under this Section 18 shall be reduced by the amount of any insurance proceeds actually received by Owner, whether under Section 20 hereof or otherwise in respect of any such Liabilities.

19. Ownership of Equipment; Federal Income Taxes. It is the intent of the parties to this Management Agreement that Owner shall at all times be and remain the owner of all Equipment. Manager shall at no time take any action or file any instrument which is inconsistent with the foregoing intent. Upon the request of Owner and/or any government agency having jurisdiction and/or any third party designated in writing by Owner as having an interest in the Equipment, Manager will take such action legally permissible and execute such documents as may be necessary to accomplish or more fully evidence the foregoing intent.

Owner shall be entitled to claim deductions, credits, and other benefits as are provided by the Internal Revenue Code of 1954, as amended, (hereinafter called the "Code"), to an owner of property, including, without limitation: (a) the maximum depreciation deduction for any year (hereinafter called the "Depreciation Deduction") with respect to the Equipment authorized under Section 167 of the Code, (b) deductions with respect to the interest payable under any note issued by Owner pursuant to Section 163 of the Code (hereinafter called the "Interest Deduction"), and (c) investment tax credit with respect to the Equipment authorized pursuant to Sections 38 and 50 of the Code (hereinafter called the "ITC"). In furtherance of the foregoing, Manager shall maintain such records, execute such documents and take such other action as may be reasonably requested by Owner to permit Owner to claim the Depreciation Deduction, Interest Deduction, and ITC with respect to the Equipment.

It is expressly understood and agreed that this Management Agreement does not constitute a joint venture or partnership and the parties hereto agree to execute such other instruments and take such other actions as may be reasonably requested by either party hereto to evidence the foregoing intention.

20. Insurance. Manager shall use its best efforts to obtain casualty and liability insurance on the Equipment in amounts not less than that maintained by Manager on equipment of a similar kind owned or leased by Manager and, if possible, the

Equipment shall be insured under a blanket policy held by Manager. Owner shall reimburse Manager for the cost of all insurance carried on or with respect to the Equipment.

21. Recording; Expenses. Prior to the delivery and acceptance hereunder of any Unit, Manager will cause this Management Agreement and Schedule No. 1, fully completed, to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. 11303, and the Equipment to be duly registered in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. Manager will also cause any management agreement assignment or other document requested by any Secured Party during the term hereof to be so filed and recorded. Manager will from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by Owner for the purpose of proper protection, to the satisfaction of Owner, of Owner's title to the Equipment or for the purpose of carrying out the intention of this Management Agreement. Manager will promptly furnish to Owner evidences of all such filing, registering, recording, depositing, refiling, reregistering, rerecording and/or redepositing, and an opinion or opinions of counsel for Manager with respect thereto satisfactory to Owner.

Promptly upon request therefor from Manager, Owner shall reimburse Manager for all out-of-pocket expenses incurred by Manager in connection with the filing and recording of this Management Agreement, any management agreement assignment, such other instruments and documents as are required to be prepared, filed, recorded, rerecorded, deposited or redeposited, and the reasonable fees of legal counsel incurred pursuant to this Section 21.

22. Interest on Overdue Payments. Anything to the contrary herein contained notwithstanding, any nonpayment of amounts and other obligations due hereunder by Manager or Owner shall result in the obligation on the part of Manager or Owner promptly to pay also, to the extent legally enforceable, an amount equal to Eighteen Percent (18%) per annum of the overdue amounts for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

23. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, addressed as follows:

if to the Owner:

Railway Freight Car Services, Inc.  
North Shore Towers  
269-10C Grand Central Parkway  
Floral Park, New York 11005

Attention: Harvey Polly, President

with copies to:

Allen L. Davis  
c/o American Money Management Corporation  
One East Fourth Street  
Cincinnati, Ohio 45202

and if to the Manager:

Columbus & Greenville Railway Company  
P. O. Box 6000  
Columbus, Mississippi 39701  
Attention: Jim Thompson, Treasurer

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

24. Right to Perform. If Manager fails to make any payments required by this Management Agreement, or to perform any of its other agreements contained herein, Owner may itself, but shall not be required to, make any such payments or perform any such obligations. The amount of any such payment and Owner's expenses, including (without limitation) reasonable legal fees and expenses in connection therewith and with such performance, shall thereupon be and become payable by Manager to Owner upon demand unless such expenses are of the type which Owner is required to reimburse to Manager upon request as herein elsewhere provided.

25. Additional Covenants of Manager. Manager covenants and agrees that:

(A) As of the date any loan is made to Owner secured by the Equipment, Manager will deliver to Owner and such other parties as Owner may request, a certificate from an appropriate officer to the effect that loan is made under (i) all of Manager's representations and warranties in Section 17 of this Management Agreement are true and correct as though made on and as of such date; (ii) no litigation

or governmental proceedings is threatened or pending against Manager or any subsidiary which in Manager's reasonable opinion will to a material extent adversely affect the ability of Manager to perform its obligations hereunder; (iii) no Event of Default, or event which might mature into an Event of Default, has occurred or is continuing hereunder;

(B) On or before the date any such loan is made to Owner, Manager shall deliver to Owner and such other parties as Owner may direct resolutions of the Board of Directors of Manager, certified by its Secretary or an Assistant Secretary and dated the date of such loan, authorizing the management of such Equipment hereunder and the execution, delivery and performance by Manager of this Management Agreement;

(C) On or before the date any loan is made, Manager shall deliver to Owner and such other parties as Owner may direct, a favorable opinion of counsel for Manager or special ICC counsel, acceptable to Owner, dated the date of said loan, to the effect that:

(1) Manager is a corporation duly organized and existing in good standing under the laws of the State of Mississippi;

(2) Manager is duly authorized to execute and deliver this Management Agreement, and is duly authorized to manage the Equipment hereunder and to perform its obligations hereunder;

(3) the execution and delivery of this Management Agreement by Manager, and the performance by Manager of its obligations hereunder and thereunder, do not and will not conflict with any provision of law or of the charter or by-laws of Manager or of any indenture, mortgage, deed or trust or agreement or instrument binding upon Manager or to which Manager is a party;

(4) to his best knowledge the execution, delivery and performance of this Management Agreement by Manager and the consummation by Manager of the transactions contemplated hereby and thereby do not require the consent, approval or authorization of, or notice to, any federal or state governmental authority or public regulatory body;

(5) this Management Agreement is a legal, valid



and binding obligation of Manager enforceable in accordance with its terms (except as may be affected and binding obligation of Manager enforceable in by bankruptcy, reorganization, insolvency and similar laws affecting the rights of creditors generally);

(6) there are not to the knowledge of such counsel any pending or threatened actions or proceedings before any court or administrative agency which will, in the opinion of such counsel, to a material extent adversely affect the financial condition or continued operation of Manager and its subsidiaries on a consolidated basis;

(7) this Management Agreement and Schedule No. 1 have been duly filed and recorded with the ICC pursuant to 49 U.S.C. 11303, such filing and recording will protect Owner's interests in and to the Equipment, and no further filing or recording (or giving of notice) in Mississippi or with any other federal government agency is necessary in order to protect the interests of Owner in and to the Equipment;

(8) to the effect set forth in subparagraph (g) of Section 17 hereof and as to such other matters as Owner shall reasonably request.

(D) On or before the date each such loan is made, Manager shall deliver to Owner Certificates of Acceptance of Manager covering the Equipment delivered pursuant to Section 2 hereof and relating to such loan.

(E) On or before the date each such loan is made, Manager shall deliver to Owner a Certificate of Manager dated the date of such loan (i) acknowledging notice of the assignment of Owner's right, title and interest in, to and under this Management Agreement to Secured Party, and (ii) certifying as to the matters set forth in paragraph A of this Section 25 and further to the effect that this Agreement is in full force and effect and constitutes a valid and binding agreement of Manager, enforceable in accordance with its terms.

26. Additional Equipment. Manager shall not purchase or lease (for more than ten years) additional Gondola railroad cars ("Additional Equipment") so long as the utilization of the Equipment is less than Seventy-Seven (77%) for a period of twelve (12) consecutive months, or such increased percentage as adjusted pursuant to Section 6(A)(1) hereof for the payment of management

fees. In the event that Manager shall purchase or lease Additional Equipment during the term of this Agreement, all straight and incentive per diem revenues due from the use and operation of such Additional Equipment shall be pooled with all straight and incentive per diem revenues due from the use and operation of the Equipment such that Owner's share of all straight and incentive per diem revenues as described herein shall not be an amount less than the product of (a) all straight and incentive per diem revenues with respect to the Equipment and the Additional Equipment, multiplied by (b) a fraction the numerator of which is the sum of the products of each such unit of Equipment multiplied by the number of days in such period that each such unit of Equipment is subject to this Agreement, and the denominator of which is the sum of (i) the sum of the product of each unit of Equipment multiplied by the number of days in such period that such unit of Equipment is subject to this Section 26 and (ii) the sum of the products of each unit of Additional Equipment multiplied by the number of days in such period that such unit of Additional Equipment is subject to this Section 26; provided, however, in the event that Manager shall lease (for a period less than ten years) or manage additional Gondola railroad cars pursuant to a lease or management agreement and the utilization of the Equipment shall be less than the percentage of Maximum Utilization determined in accordance with Section 6(A)(1) hereof, all straight and incentive per diem revenues due from the use and operation of such cars shall be added to the revenues under subsection (a) above; provided, further, nothing contained herein shall be deemed to amend Section 5 of this Agreement; provided, further, that Manager shall receive as a management fee all such revenues in excess of the percentage of Maximum Utilization determined in accordance with Section 6(A)(1) of this Agreement.

Within Sixty (60) days after the end of each of the first Three (3) quarters of each Fee Year, and within Sixty (60) days after the Fourth (4th) quarter of each Fee Year, Manager shall provide a complete accounting to Owner of the straight and incentive per diem revenues due from the use and operation of of the Equipment, Additional Equipment and if applicable, any Gondola cars under lease or management agreement under the last proviso of the immediately preceding paragraph, and the Owner's preceding paragraph of this Section 26. Within Ninety (90) days after the end of each Fee Year, the actual amount of such management fee in such Fee Year shall be finally determined by Owner, and any additional amount owing to Manager, or any amount due Owner, shall promptly be remitted to the appropriate party within Ten (10) days after written notice of the final amount in accordance with Section 6(A)(2) of this Agreement.

27. Severability; Effect and Modification of Management Agreement; Owner. Any provision of this Management Agreement

which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Management Agreement, and Exhibits hereto, exclusively and completely states the rights of Owner and Manager with respect to the Equipment. No variation or modification of this Management Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of Owner and Manager.

Whenever the term "Owner" is used in this Management Agreement, it shall mean Railway Freight Car Services, Inc., and any assignee, in whole or in part, of Owner's right hereunder, including any Secured Party.

28. Execution. This Management Agreement may be executed in several counterparts, but the counterpart delivered to the ICC for recordation shall be deemed the original counterpart and all other counterparts shall be deemed duplicates thereof.

29. Law Governing. The terms of this Management Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Ohio; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. 11303 and such additional rights arising out of the filing, registering, recording or depositing hereof and of any assignment hereof or out of the marking of the Equipment as shall be conferred by the laws of the several jurisdictions in which this Management Agreement or any assignment hereof shall be filed, registered, recorded or deposited and any rights arising out of the marking of the Equipment.

30. Miscellaneous.

(A) This Management Agreement and the Exhibits hereto shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(B) The Section headings set forth herein are for convenience and reference only and are not intended to modify, limit, describe or affect in any way the contents, scope, intent or interpretation of this Management Agreement.

IN WITNESS WHEREOF, the parties hereto, each pursuant to

RAILWAY FREIGHT CAR SERVICES, INC.,  
Owner

BY: Harvey Polly, President

Attest:

COLUMBUS & GREENVILLE RAILWAY COMPANY,  
Manager

BY:

Attest:

STATE OF )  
COUNTY OF ) SS:

BE IT REMEMBERED, that on the \_\_\_\_\_ day of \_\_\_\_\_, 1980, before me, the subscriber, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_ of COLUMBUS & GREENVILLE RAILWAY COMPANY, the corporation whose name is subscribed to and which executed the foregoing instrument, and for himself and as such officer, and for and on behalf of said corporation, acknowledged that he did execute said instrument on behalf of said corporation, and that the signing and execution of said instrument is his free and voluntary act and deed, his free act and deed as such officer, and the free and voluntary act and deed of said corporation for the uses and purposes mentioned in said instrument.

Notary Public

SCHEDULE No. 1

TO

MANAGEMENT AGREEMENT

Specifications	Maximum Quantity	Manager's Road Number (Both <u>Inclusive</u> )	<u>Base Price</u> <u>Aggregate</u>
		CAGY 13,000- 13,049	\$ 50 \$2,057,500

Illinois

EXHIBIT A  
TO  
MANAGEMENT AGREEMENT

CERTIFICATE OF ACCEPTANCE

Reference is made to that certain Management Agreement between Railway Freight Car Services, Inc. and Columbus & Greenville Railway Company.

The undersigned does hereby certify that the Units whose serial numbers are listed below have been inspected by the undersigned, conform to the specifications for Units contained in correspondence from Thrall Car Manufacturing Company dated January 9, 1980 addresssed to Harvey Polly, Railway Freight Car Services (Thrall Car Specifications GN-100-52-250-A), as assigned, as well as the specifications and requirements of the Management Agreement, are each marked in accordance with Section 7 of the Management Agreement, and conform to all applicable governmental regulations, and that the undersigned, as the Manager's authorized representative, hereby accepts such Units.

Dated: \_\_\_\_\_, 1980

\_\_\_\_\_  
Manager's Authorized Representative  
Total Number of Units:  
Serial Number of Units: